and the Commission's "test year rules." Here again, the court rejected such a broad reading of Finkl and explained its limitations by stating, in part, that:

> ...we read Finkl as holding that the Commission abused its discretion in allowing a rider recovery mechanism under the circumstances because demand-side management costs are not of an unexpected, volatile or fluctuating nature so as to necessitate recovery through a rider. Again, we do not read Finkl as holding that the Commission does not have the authority to allow recovery of costs through riders. Given our view of the Finkl court's holding, we view the opinion's discussion of retroactive ratemaking and test year rules as dicta. 255 Ill. App. 3d at 885 (emphasis added).

The rider challenges continued by the Illinois Supreme Court in CUB v. ICC. At the very outset of its discussion, the Court recognized that riders "often include a reconciliation formula, designed to match recovery with actual costs." CUB v. ICC, at 133 (citing to City of Chicago, 13 Ill. 2d 607, 609 (1958)). While not addressing the retroactive ratemaking argument directly, because it was found to be waived, the Court found nothing unusual with the reconciliation procedure terms for the rider at hand. The Court observed that the reconciliation formula used to determine the amount of the rider charge includes a matching of costs incurred with the revenue realized. Id. at 140. In the end, the Court found the Commission's approval of a rider for the recovery of coal-tar clean-up costs to be within its authority and not against the manifest weight of the evidence. Id.

In United Cities Gas Co. v. Illinois Commerce Comm'n, 163 Ill. 2d 1 (1994), the Illinois Supreme Court considered various challenges to a Commission-ordered refund of certain gas costs that occurred in the context of a PGA reconciliation proceeding. In pertinent part, the Court rejected the utility's argument that the refund order constituted retroactive ratemaking. Id. at 12. First and foremost, the Court noted that the Commission's order was entered in a reconciliation proceeding under Section 9-220 of the PUA, which is an express exception to the general prohibition against retroactive adjustment of rates. Id. at 14-15. Second, and as importantly, the Court held that the Commission's refund order "did not disturb any of its prior orders or disallow charges or benefits it had previously approved, as did the Commission in Citizens Utilities when it ordered a deduction from the base rate of tax benefits it had allowed for 24 prior years." Id. at 15. Indeed, the Court observed that despite certain testimony of record, the Commission did not make adjustments to, or rescind orders entered in earlier proceedings so as to retroactively deny the utility any revenues or benefits it had previously allowed. As such, the Court addressed what the rule against retroactive ratemaking prohibits and concluded that the Commission's order did not constitute retroactive ratemaking. Id. at 18.

Analysis

What is common to the seminal cases setting out the retroactive ratemaking doctrine is that once the Commission sets rates, these will be held as just and reasonable so long as the order fixing the rates remains in effect. And, it is well-settled

that the Commission sets rates in two ways; by base rates and by an automatic adjustment clause, i.e. the rider mechanism.

Upon careful and studied consideration, the Commission concludes that Rider VBA presents no violation of the rule against retroactive ratemaking. Rider VBA does not disturb either this order or any of the Commission's prior orders. Nor does it disallow charges or benefits previously ordered. The adjustments and true-ups under Rider VBA do nothing to alter or de-stabilize the revenue requirement established here. The rates are what they are. Nor does Rider VBA disturb any of the underling revenue formula components and decisions thereon arrived at through the traditional rate-making process in this proceeding. Nor does Rider VBA suggest that the rates are in any way excessive or insufficient. This order establishes the rate that the Utilities are required to charge and pursuant to Rider VBA the Utilities would only receive the margin revenues that the Commission intends to be recovered. It is not the rates, but the computation of these rates that varies.

The only case that directly considers the rule against retroactive rulemaking in the "true" rider situation is CILCO. And, that opinion strictly limits the application of that doctrine by Finkl to the fact particulars in that decision. In short., we observe, CILCO does not embrace it.

Even if we consider Finkl, however, we see no real analysis there on the rule against retroactive ratemaking. The facts to which the court appears to have applied the rule, i.e., a prudency review procedure, is something common to riders. This was well recognized and looked upon favorably by the Illinois Supreme Court in CUB v. ICC, both in its discussion of reconciliations generally, and in its review of the specific reconciliation mechanism that was at hand. Notably too, the court in CUB v. ICC relied, more than once, on its prior pronouncements in City I.

The sound and enduring analysis in City I makes clear that an automatic rate adjustment clause does nothing to change the fixed and prospective nature of rates approved by the Commission. It explains that:

> [An adjustment] clause is nothing more or less than a fixed rule under which future rates to be charged the public are determined. It is simply an addition of a mathematical formula to the filed schedules of the Company under which the rates and charges fluctuate as the wholesale cost of gas to the Company fluctuates. Hence, the resulting rates under the escalator clause are as firmly fixed as if they were stated in terms of money. City I, 13 Ill. 2d at 613.

This simply means that where a rate schedule approved by the Commission contains a mathematical formula for making future changes in the rate schedule, it is not unlawful under the doctrine of retroactive ratemaking. As such, the GCI and Staff have it wrong. The adjustment contemplated under Rider VBA is precisely the type of adjustment mechanism contemplated in City I which stands as good legal authority.

c. Violations of Test Year Rules.